

July 28, 2021

[REDACTED]
[REDACTED]
[REDACTED]
Codorus Township

Property ID [REDACTED]

RE: ACRE Review Request – Preservation Practices

Dear Attorney Willig,

We are requesting an ACRE review of Codorus Township's Zoning and Preservation Practices and how it restricts or limits the ownership structure of a normal agricultural operation. I do not feel the Preservation Practices themselves are in violation of ACRE but how the township applied them to our situation could very well be.

Farming is more than putting the plow to the ground and harvesting. The Right to Farm Act defines a normal agricultural operation as consisting of "the activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of agricultural commodities...". Farming takes planning, sometimes months to even years in advance. Fertilizer and seed purchases, field rotations and layout, succession planning, preparing for growth which could require permits and even more important transfer planning of the farm itself are all part of normal farming practices that support the current and future ownership structure of a farm operation.

We are [REDACTED]. We own and operate [REDACTED] in Codorus Township. [REDACTED] and Farm Market was in operation from August of 2002 until Codorus Township revoked the permit in August 2016 stating "issued in error". The permit issue was part of a prior ACRE complaint. Under separate email I will be requesting the prior ACRE complaint be revisited. This complaint focuses on Codorus Township's Zoning and Preservation Ordinance.

Ordinance:

In 1974-75 Codorus Township adopted the York County Planning Commission's Zoning and Preservation Practices as the foundation for their Zoning Ordinance using the sliding scale method for limiting Dwelling Units. According to the YCPC June 2009 publication titled Protecting York County's Rural Environment - Current Zoning and Preservation Practices

(<https://www.ycpc.org/DocumentCenter/View/311/Protecting-York-Countys-Rural-Environment-PDF>), "the main threat to farm land in the County was, and still is, not weather related or soil quality depletion but rather the subdivision of working farms into smaller tracts for the purpose of creating residential developments."

Codorus Township took it one step farther and made contiguous farms under the same ownership be considered as one tract for zoning purposes and limiting future separate sales of the contiguous farms. Allowing for only 1-acre subdivisions meant the contiguous tracts could not be separated even thou the township allowed parcels to hold and pay taxes on separate deeds that made up the tracts. The term "tract" is used throughout the Codorus Township's Zoning Ordinance and the Subdivision and Land Development Ordinance (SALDO). According to the Ordinances the term "tract" is defined as: All lands which (1) was owned by the same owner or owners on December 7, 1974, and (2) is contiguous. Land

shall be considered contiguous even though separated by a public or private road and/or by land adverse from the original tract since December 7, 1974.

The publication also states that the Agriculture Preservation Zoning (APZ) techniques require continuous monitoring from the first day the ordinance is adopted. Codorus Township falls short in this aspect and has failed in maintaining accurate recording records. It seems there was and still is no special recording requirement of the contiguous tracts. Contiguous tracts are by ordinance required to stay together. Over the years, several farm owners were denied the ability to sell or pass down their contiguous farms individually. Subdivisions greater than one acre are not permitted. Codorus Township has a long history of defending their ordinance. You will find one of Codorus Township's cases in the YCPC Preservation Practice publication. By not instilling proper recording or the ability to track transfers held in common ownership prior to 1974 has left numerous properties in the township in questionable ownership and possible illegal subdivisions. After the adoption of the Preservation ordinance owners of merged tracts found themselves with one less Dwelling Unit when the sliding scale is applied.

Even with the township's history of defending the Preservation Practice by requiring tracts stay together our situation is being treated vastly different. We are being forced to subdivide the family farms that by ordinance are considered one tract and by a 1982 recording that shows the contiguous farms as one tract. This action contradicts the long-upheld practices. We did not want to participate in a subdivision simply because we wanted to determine ownership, dwelling unit allocation, ROW's and figure a way to keep the farms together in compliance with the ordinance. The township refused any assistance in the matter. Not wanting to participate in the Variance application for a subdivision resulted accusations of being uncooperative and the revocation of our market permit. Preventive Remedies were later enacted to prevent issuance of any future permits until a subdivision is completed. The townships inaction has greatly limited both the ownership structure and the operation of [REDACTED] for the reasons stated above.

Brief History:

[REDACTED] owned two farms prior to 1974 [REDACTED] making them a single 135 tract after the adoption of the Preservation Ordinance. In 1982 as part of a small subdivision the two tracts were recorded as one (reference [REDACTED] We own one of two farms [REDACTED] acres) that form the "merged tract". We took up residence in 1985 and purchased the farm from [REDACTED] in August 2002 in a private sale allowing them to hold the mortgage. Title work was completed. We've obtained numerous permits and developed a business structure [REDACTED] on our farm. At no time was a violation of ordinance mentioned.

The other farm [REDACTED] owned by family member [REDACTED] transferred through a life estate for [REDACTED] 2006. [REDACTED] reside in [REDACTED] In 2015 [REDACTED] contacted the township about selling his farm at public sale and inquired about Dwelling Units and ROW's. Township's reply stated that [REDACTED] could not sell his farm and in fact is connected to ours due to the 1982 recording. The '74 Preservation Ordinance only permits 1-acre subdivisions so his farm could not be separated. Despite the recommendations of Codorus Township, York County Planning Commission and township engineer [REDACTED] transferred his farm to [REDACTED] in August 2016 [REDACTED] and their council [REDACTED] were all fully aware that the transfer violated Codorus Township Ordinance and SALDO. By letter, Codorus Township was made aware of the pending transfer. We were not informed until after the transfer took place. No enforcement action was taken by the township. On the contrary they helped facilitate the violation.

The township's position is the farms were illegally separated by [REDACTED] when he transferred the farms individually. The township will not comment on "when" the actual illegal subdivision occurred. As stated in a letter from [REDACTED] attorney for Codorus Township's Planning Commission, it was the intent of the township to require the farms be recombined according to ordinance. [REDACTED] stated the property issue needed to be settled between the brothers [REDACTED]. It is presumed that [REDACTED] later had a change of heart. If the township would have simply enforced the ordinance the brothers would have eventually worked out an agreement that was satisfactory to both parties and in compliance with the ordinance. Allowing the transfer against ordinance and without any ramifications to [REDACTED] has proved very detrimental of our family, farm operation and our future [REDACTED] resides in Lancaster. He interns has relative [REDACTED] residing on the farm.

Since the transfer we have had numerous incidences of cattle escaping poorly installed fence. Barbed wire fence that was instructed to be removed for improper placement was thrown into our soybean field. Newly constructed fence has been permitted to be placed on a property line that according to the township does not exist due to an incomplete subdivision. This fence could possibly be misconstrued as a barrier. Dead cattle left to decay without proper mortality disposal. A visit from the Game Warden with an inquiry of out of season hunting. Puppy photographers, transport drivers, delivery drivers argue that their GPS tells them to follow our farm lane to the adjoining farm. The adjoining farm has its own address and driveway. A propane delivery truck drove thru two electric fence connections into our corn field. These incidents are frequent and we fear if the subdivision is finalized will escalate.

The unfair dealings by the township and several actions that were not in good faith by [REDACTED] has broken our trust. We are asking the Office of Attorney General review Codorus Township's Zoning and Preservation Practices including the Sliding Scale for Dwelling Unit Allocation, Subdivision and Land Development Ordinance and how they were applied to our situation. In my opinion the interference in the permit process and the inaction of the Board of Supervisors to allow a violation of ordinances without enforcement are both in violation of ACRE. The reasons behind Codorus Townships actions are both suspect and problematic.

"Clearly regulations are not designed for one special moment in time - the issuance of a use certificate. Ongoing compliance with regulations, whether they are promulgated by the local municipality or the Commonwealth, must be mandated or the regulations are worthless." [REDACTED] - ACRE Review Request August 7, 2019.

Thank you for your time and consideration,
[REDACTED]
[REDACTED]
[REDACTED]

See Attachments:

#2. Variance Hearing February 6, 2019

February 6, 2019 Variance Zoning Hearing to 1. Lift the Preventive Remedies to be able to reinstate our market permit and 2. A Variance to subdivide the farms. The variance application, decision and transcript are attached. The application provides a portion of history [REDACTED] did not attend the hearing nor did he request standing. We were given a variance to subdivide a 134 tract without both "owners" present.

ZHB did not discuss or permit lifting the Preventive Remedies despite being noted on the application.